

Spring 2006

AlumniReview

UND Alumni Association and UND Foundation



SIoux-PER GALA & AUCTION

April 22, 2006

Alerus Center Ballroom

Grand Forks, N.D.

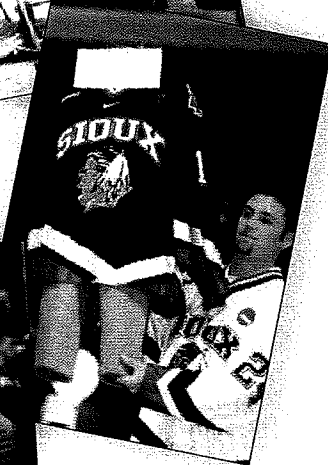
4 p.m.

Near or far, you can support
UND student athletes
through the 2006 Sioux-Per
Gala & Auction:

- Donate items to the silent and live auctions.
- Become a cash sponsor.
- Bid for items online.
- Attend the auction!

(Tickets are limited; call now.)

*For more information or to
preview items, visit
www.undalumni.org, or call
(800) 543-8764.*



EMERALD: Leighton Broadcasting, Harley Camperud

SILVER: ICON Architects, KVLV-TV11, Clear Channel, Forum Communications, WDAZ / WDAY

BRONZE: Bremer, Congress Inc., Alerus Financial, All Seasons Garden Center, Altru, Home of Economy, Xcel Energy, Alerus Center, Greenberg Realty, Merit Care, Rydell GM Auto Center

W W W . U N D A L U M N I . O R G

SIoux-PER SWING GOLF TOURNAMENTS

**ALL ALUMNI AND FRIENDS ARE INVITED
TO JOIN US FOR A FUN DAY OF GOLF!**



Tuesday, June 6	Rolla Municipal Golf Course, Rolla
Thursday, June 8	Hillcrest Golf Club, North Valley, Park River
Monday, June 12	Grand Forks Country Club-- GF Ladies
Thursday, June 15	Prestwick Golf Club, Woodbury, MN--Twin Cities
Monday, June 19	Oxbow Golf and Country Club, Fargo
Thursday, July 13	Grand Forks Country Club--GF Men's
Thursday, July 20	Rugby Country Club, Rugby
Monday, July 24	Devils Lake Town & Country Club, Devils Lake
Thursday, July 27	Detroit Country Club, Detroit Lakes
Monday, July 31	Football Letterwinners, Prior Lake
Tuesday, August 1	River Oaks Golf Course, Twin Cities Ladies
Monday, August 7	Hawktree Golf Course, Bismarck
Thursday, August 10	Valley Ridge Golf Club, Calgary

Sponsored by:



QUESTIONS? PLEASE CONTACT LORA AT (800) 543-8764.

NCAA

EXHIBIT 3

OFFICE OF THE PRESIDENT
P.O. BOX 8193
GRAND FORKS, NORTH DAKOTA 58202-8193
(701) 777-2121
FAX (701) 777-3866



WHY THE "SIOUX" MAY HAVE TO SUE

June 7, 2006

JUN 09 2006

VIA OVERNIGHT MAIL

National Collegiate Athletic Association
c/o Myles Brand and Bernard Franklin
1802 Alonzo Watford Sr. Drive
P.O. Box 6222
Indianapolis, Indiana 46202

*copies: BF
EKC
WR
Bob W.*

PLS PREPARE REPLY, MY
PLS ACKNOWLEDGE, MY SIG
PLS ANSWER, YOUR SIG
PLS SEE ME
PLS HANDLE
FYI AND RETURN COMMENT
FYI AND RETURN
FOR YOUR INFO & FILE
SIGNATURE AND DATE

Dear All,

I have chosen to communicate with you in this way for several reasons. Since you have had what you say is the "final" word on the issue of our nickname and logo, we must now consider legal action. I want you, as well as University of North Dakota stakeholders and the general public, to know why we must. The NCAA leaves us no recourse but to consider litigation to make the point that the policy you have instituted is illegitimate and that it has been applied to the University of North Dakota in an unfair, arbitrary, capricious, fundamentally irrational, and harmful manner.

Despite some of the hard-edged language I have had to use in this letter, I bear no animosity toward any of the NCAA committee members or staff, who, I am certain, are all good people. I suspect that a few people were the driving force and that the issue took on an organizational life of its own. I'm sure that those doing the pushing were motivated by personal conviction. What ever the origin, what emerged was, unfortunately, a kind of organizational self-righteousness. Self-righteousness has wrecked havoc in the guise of good throughout history. Once the self-righteous come to believe in the absolute correctness – political or otherwise – of their point of view, they proceed with a zeal that leaves no room for reasonable doubt, thoughtful consideration, or fairness.

I hope you understand that as the chief executive officer of the University of North Dakota, I am – as I have been – doing my best to implement a State Board of Higher Education policy governing our nickname and logo. I must also admit to a personal dislike and aversion to the corruption of logic in the convoluted process you used in arriving at your decisions. Also, because I am a graduate of Indiana University of Pennsylvania, spent time at the University of Illinois in a post-doctoral program, and serve as president of UND, I know directly what great institutions these are. They all deserve better from the NCAA than to be charged with decades of being hostile and abusive – with a presumption of guilt. I wonder if you really have any idea how serious these charges are. I admit that because of my sense of justice and fairness, I would have taken personal issue with what you have done here in any case.

The policy is illegitimate

We understood that our membership covenant with the NCAA meant that the NCAA would be even-handed, fundamentally fair, respectful of institutional autonomy, and that the affairs of the Association would be carried out according to the letter and the spirit of its bylaws. The generation of your nickname policy and its application has violated all of these principles. We had no reason to believe that the range of authority of the Executive Committee extended to affairs outside of athletics –especially in the casually arrogant way this has been done. We certainly do not believe that we agreed by our membership that – as a condition of full membership privileges – a small committee would have the authority to change the architecture of sports facilities that we do not even own or cause us to modify our very history. Athletic issues of even far less magnitude have been handled through legislation, not executive fiat. It appears there may be no recourse but to try to clear this up through litigation.

The application of the policy has been unfair, fundamentally irrational, arbitrary, and capricious

To begin with, you asserted that any use of American Indian images or nicknames was hostile and abusive. Later you changed this to hostile or abusive – as if this were meaningful in some way. Some of your initial rhetoric actually encompassed nicknames derived from any race or ethnic group. Many of us heard Myles Brand in a radio interview say that “Fighting Irish” was not a problem nickname because (his words) it was really about leprechauns and not real people. Really?

We explained that we have a beautiful logo designed by a respected American Indian artist and that we use the nickname with consummate respect – expecting and getting respect for the Sioux culture from our fans. We pointed out that we do not do tomahawk chops, we do not have white guys painted up like Indians, and our fans do not do Indian chants.

In an amazing display of organizational arrogance, Walter Harrison, in answer to the following direct question at a recent news conference:

"Are there incidents the NCAA has recorded where it (UND) appears to be hostile and abusive?"

he said, obviously ducking the question entirely:

"Today's decision was to review whether the staff's original decision was the right one. We tried to confine ourselves to that. We believe the use of the Fighting Sioux and the mascots [he is apparently still unaware that we do not have one] and imagery [ours was designed by an American Indian] that represents (sic) are hostile and abusive and we don't believe the University has made a case to the contrary." [emphasis added]

Evidence? What evidence? Courts tend to dismiss hearsay and to demand and rely on real evidence.

We invited you to come and see for yourself and you refused.

We now have your letter of May 15 in which you make reference to "substantial evidence," but nowhere in the letter is this evidence described. In lieu of evidence, you simply cite "staff review," apparently of hearsay testimony by various local and national groups. Most of these simply assert that they are opposed to any use of nicknames anywhere by anybody at any time.

The fundamental irrationality of calling what we do hostile and abusive – on the basis of no basis at all – and then saying that a white guy in war paint, carrying a flaming spear while riding a horse into a stadium, leading fans in a tomahawk chop while singing an Indian chant is okay should be obvious to any jury. Any who try to swallow this convoluted logic will choke on it.

The NCAA's organizational arrogance extends to the innovative and abusive use of the English language. You indicated that Florida State University was exempted because it has a "special relationship" with the Seminoles. At the time you said this, Florida State enrolled just four Seminole students. We have one-hundred times more Indian students here, yet FSU's is a "special relationship" while ours, you say, is "hostile and abusive."

Arrogance may not be a criminal offense or cause for civil action, but it smells bad and it may be a cause for litigation when it leads to careless, irrational, arbitrary, capricious, and ultimately harmful behavior.

"Arrogance" may be harsh, but I could not come up with a better word. When you say, as you did in announcing your most recent exemption – this time Catawba Indians:

Although the NCAA executive committee continues to believe the stereotyping of Native Americans is wrong, it recognizes that a Native American Tribe is a distinct political community . . . therefore, respects the

authority of the tribe to permit universities and colleges to use its name and imagery.

The arrogance of this statement is appalling. It is as if to say, "American Indians may think it is OK, but the NCAA knows better," or perhaps, "If these tribes (now at least six in number) are not astute enough to recognize that they are the objects of hostility and abuse, let them wallow in it." Further, if a Native American tribe is a "distinct political community," why is it that the continuing resolution by the Spirit Lake Nation that allows UND to use the Sioux name is – in the NCAA's words – "not persuasive?"

Instead of the logical conclusion, that if American Indians, themselves, think Indian nicknames are OK, perhaps they really are OK, we get the latest in a long series of non-Natives deciding what's best for American Indians.

Although you say you considered all of the material we put into our appeal, your responses and actions indicate otherwise. I point out, again, some of the extraordinary programming we have in support of American Indian students.

American Indian education is a \$12 million enterprise at UND. Much of the total is provided by the tribes themselves, by the students and their families, and by the federal government. None of this would happen, obviously, if the environment here were in any way hostile and abusive. There is also a substantial University component as well. The University annually provides about \$400,000, mostly in the form of waivers of tuition specifically for underrepresented groups. Nearly all of this goes to American Indians.

We have more than 30 separate programs in support of American Indian education. Most of these are administered by a staff of seven American Indians. Most of the programs are based in a new American Indian Center funded by the University and by generous donors. These programs include a thirty-year-old Indians-Into-Medicine program which has educated about one-fifth of all (enrolled) American Indian physicians in the United States. Your action has, unfortunately, put all of this under a cloud of "hostile and abusive." We must find some way to set the record straight.

In the subsequent handling of our appeal you indicated that the burden is actually on us. We must prove that the athletic program and our general campus environment **are not** hostile and abusive.

Although we thought it strange – perverse actually – to assume guilt until innocence was proven, or at least objectively indicated, we offered the facts that (1) **our nearest Sioux Tribe gave us written permission** (which still stands despite repeated attempts by the NCAA staff itself and other nickname opponents to ask the Tribal Council to rescind its resolution) to use the name; (2) **we have over four hundred American Indian students going to school here**, many of whom are just fine with the nickname and none of whom would be here if the environment were really hostile and abusive; (3) **it was reported to you, directly by the Chair of the Tribal Council Judicial Committee that, at the only other Sioux Reservation based in North Dakota, a**

district-by-district referendum resulted in nearly unanimous support for UND's use of the Sioux nickname; and, (4) the Office for Civil Rights of the U.S. Department of Education spent a week here investigating earlier "hostile environment" charges made by our local nickname opposition group – and made no such finding – as clear indications that our handling of the nickname is in no way hostile and abusive.

Fighting Sioux and our logo are registered trademarks. The Federal Trademark Act of 1946 prohibits the registration of any mark that:

Consists of or comprises immoral, deceptive, or scandalous matter, or matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols or bring them into contempt or dispute.

The fact that our mark is registered would seem to rule out "hostility and abuse," as well.

You should be aware, because we cited it in our appeal, that in a poll of American Indians in North Dakota, more than half said their support for UND would not change if the University chose another nickname but one in four said that they would support the University less – yes, less – if we were to change our nickname? This, too, cannot possibly be reconciled with "hostile and abusive."

We cannot fathom why all of the above is not sufficient to make the case that the climate here is anything but hostile and abusive or – even for the most zealous – raise the specter of "reasonable doubt." Maybe it will in court.

Still later in the appeal process, NCAA staff implied that as long as there was any opposition (apparently anywhere) and despite the support we had, we would remain on the list.

How is it that a resolution from a tribe in South Dakota or Arizona stating opposition to any use of American Indian nicknames, is applied to UND (which is in North Dakota), but not to all other schools in all other states using such names?

We know there is opposition by some Seminoles and by some Chippewa to the nicknames you have exempted. The Chippewa Tribe of Central Michigan may have given its permission, but we know that other Chippewa Tribes have registered opposition – a situation identical to ours with an entirely different outcome. Any reasonable person would find this **arbitrary** and **capricious**.

There is perhaps something even more **irrational**. You have unfairly and illogically equated resolutions of opposition with an objective finding of pervasive hostility and abuse. In fact, nearly all of the resolutions you cite indicate that they were actually solicited by our local nickname opposition group. Some of the resolutions dated in the

late 1990s referenced as the basis for the resolutions an incident that took place on campus in the early 1990s. This suggests that whatever that incident (before my time and, I'm sure, was dealt with quickly and decisively) was, it hardly describes a climate of hostility and abuse nearly twenty years later.

By the way, it was widely and cynically noted here that "Pontiac" is a corporate sponsor of the NCAA. But perhaps this is unfair; both the NCAA and General Motors may well have gotten the permission of the descendants of Chief Pontiac or the Ottawa Tribe.

As directed by our State Board of Higher Education, we have been in dialog with tribal leaders over this issue. We are now discussing both how we might agree to go forward with our nickname tradition and how we might go about changing it – morphing it maybe into a new tradition emerging from the old. Because it is clear that you have handled this issue with no particular standard, we do not know how much latitude we have going forward. Perhaps the courts will rule that you should get out of the way so that we can get on with our discussions.

As it is, you have put us in the position of being unable to change or modify our nickname because to do so would be an admission of something we know to be false.

There may be no way out of this dilemma except litigation.

We are concerned that even if we were to cave in and change our name, you might subsequently hold us hostage until the great State of North Dakota changes all of its state highway signs which now depict a silhouette of an Indian. You might, some say, insist that the Indian logos on the doors of all of our (marked) Highway Patrol cars be removed.

How far does the NCAA think its jurisdiction goes? Does it extend into history? Do you really expect us to airbrush all of the references to Sioux off the jerseys of our many national championship teams – on the many photographs and championship banners lining the walls of our sports venues?

And get this: even if we were to stop using the nickname we have used with pride for nearly eighty years, and decided to forgo any nickname – since they may all be at some future risk – and simply be known as the University of North Dakota and used the University's seal or even the State Seal, we would still apparently be in violation of your policy. "Dakota" is what some of the Sioux actually call themselves. Our University Seal and the State Seal have images of American Indians on them.

Imagine a scenario in which we bow to the NCAA and remove every vestige of our connection to our traditional nickname, and we earn the right to host one of the exempted schools, say Florida State, in a championship game. Your policy would allow Florida State to come into town with its logo and nickname proudly displayed, led by someone who paints himself up like an Indian "on the warpath" and carries a flaming spear. He could ride into our stadium on a horse and lead FSU fans in a tomahawk

chop and an Indian chant. This, while our fans, then the obvious victims of an **unfair** and **irrational** policy, seethe in rightful anger.

But there is more. Your intrusion into an area in which you had no business intruding has actually done considerable harm here and probably elsewhere. In order to leverage your opposition to Indian nicknames, opponents here have appeared to endorse your assertion that the environment here is hostile and abusive. Ironically, this has included some of the very people whose job it is to recruit American Indian students, and who have repeatedly said publicly, that we have the most supportive environment in America for Native American students. This will likely have the effect of driving Indian students away. We appear to have no choice but to pursue litigation as the only way to set the record straight.

The NCAA's handling of our case has unfortunately left the impression that the nickname issue is an Indian vs. non-Indian issue here in the Dakotas. Rhetoric surrounding the latest Executive Committee decision implied that if we are forced to give up our nickname, it will be the fault of a single tribal leader. These impressions are, of course, false. Most Native people here are either supportive of our nickname or consider the issue trivial. There are both Native and non-Native opponents of all nicknames. We must do something to clear this up so that race relations here are not strained as a result of what you've done.

Should we stand firm and, with the support of North Dakota tribes, keep our nickname, we will, of course, be able to show substantial financial harm. Since we recently hosted the West Regional Hockey Tournament, it will be easy to show the benefit to the University and to the community almost down to the penny – a benefit we would lose under your policy.

I have not until now mentioned the fundamental unfairness of depriving our student-athletes of earned home-venue advantage. This strikes many of us as hostile to, and abusive of, the very group the NCAA is supposed to protect. This, we believe, is also **fundamentally irrational**.

Perhaps the most amazing thing is that through all of this – except for stirring things up – you have accomplished nothing. Your stand against Indian nicknames and logos – a stand that seem to start out against all references to races and national origin – fizzled before it started when you left out Irish, Celtics, Vandals, and a host of other names. Then, for highly convoluted, hypocritical, and in some instances mysterious reasons, you exempted the Aztecs and other American Indian nicknames at the outset and, following that, you exempted the use of Chippewa, the Utes, the Choctaws, the Catawbas, and the Seminoles, leaving the NCAA position on even American Indian nicknames about as solid as room-temperature Jell-O. All of this was, and remains, highly **arbitrary** and **capricious**.

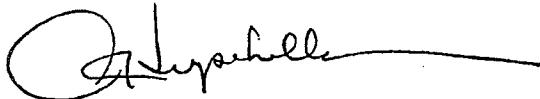
Thoughtful consideration

It may be that we have indeed forfeited our rights to fairness and evenhandedness by becoming "volunteer" members of the NCAA, but we may need to find out for sure in the courts since there really is no other membership option for UND.

We are taking some time to examine our case against the NCAA, giving careful consideration to all of the issues above-referenced, the likelihood of both legal and public relations success and to the cost and energy that will go into litigation. Even though we have had many offers of free legal help and financial support should we litigate, we know that our time – and yours – could be better spent. Certainly you have plenty of things to fix that really do have to do with athletics. We, too, have more important things on which to work.

All of this notwithstanding, sometimes – even at some cost and some risk – it is best to stand up to injustice.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Kupchella", with a long horizontal flourish extending to the right.

Charles E Kupchella, Ph.D.
President

NCAA

EXHIBIT 4

DRINK 'EM LOTS O' FIRE WATER

IF YOU GET

RID OF THE

'FIGHTING SIOUX'

PAY TAXES

THEN WE GET
FIND SOMETHING BETTER FOR TIME "LIKE A JOB"

RID OF YOUR

LIVE AT THE RES FOR FREE

FREE SCHOOLING!

YOU LOST THE WAR, SORRY

IF THE

WISH I COULD GO TO SCHOOL 4 free

NAME HAS

WANT YOU FIND ANYTHING
else to whine about?

WISH I COULD
GET 100,000 WHEN I
TURN 18

TO GO

NAME (SLOW) FOR UNB, but it can be used @ CASINO'S?

SO SHOULD

YOUR FUNDING

"Go back to the Res, or
work @ the Casion, PRARIE,
NIGGA"

BUCK
the Bison



UNDER